Supreme Court, U. S.
FILED
JAN 26 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-511

LO-JI SALES, INC.,

Petitioner,

—v.—

STATE OF NEW YORK,

Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE TERM OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE NINTH AND TENTH JUDICIAL DISTRICTS

PETITION FOR A WRIT OF CERTIORARI FILED SEPTEMBER 26, 1978
CERTIORARI GRANTED NOVEMBER 27, 1978

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Relevant Docket Entries

[Each entry set forth below is entered on each of three separate pages in the actual docket book, once for each of the three charges which were filed against petitioner]

STATE OF NEW YORK

COUNTY OF ORANGE

Local Criminal Court: Town of Wawayanda

THE PEOPLE OF THE STATE OF NEW YORK,

—v.—

LO-JI SALES, INC.

6/25/76	(Information) (Misdemeanor Complaint) (and attached Supporting Deposition) filed. (Affirmed) (Verified) and subscribed by J. A. Hurbanek.
8/27/76	Suppression Hearing held.
11/13/76	Defendants Motion denied.
2/ 3/77	Defendant plead guilty to Obscenity—2nd deg.
2/ 3/77	The following sentence was imposed: $1,000.00 fine.
2/ 3/77	Fine will not have to be paid to give attorneys a chance to file for an appeal.

Information/Complaint

(Secs. 100.05-100.50 CPL)

LOCAL CRIMINAL COURT
Town of Wawayanda, County of Orange, New York

THE PEOPLE OF THE STATE OF NEW YORK,

—v.—

LOJI SALES INCORPORATED, 128-132 North Eigth [sic] St., Allentown, Pa., JOHN KRASNER & ALEXANDER MANDAKIS.

I, J. A. Hurbanek, the COMPLAINANT herein, am a police officer of the State of New York, to wit, a(n) Investigator of the New York State Police attached to Troop F, stationed at Middletown, New York.

I ACCUSE LOJI SALES INCORPORATED/JOHN KRASNER & ALEXANDER MANDAKIS, the DEFENDANT(S) in this action and charge that on or about the 25th day of June, 1976, at ADULT STORE in the Town of Wawayanda, County of Orange, New York at about 11:00 o'clock in the forenoon said DEFENDANT(S) did intentionally knowingly and unlawfully COMMIT THE misdemeanor(s) of OBSCENITY IN THE SECOND DEGREE—Three Counts contrary to the provisions of Section 235.05, subdivision 1 of the Penal Law of the State of New York.

THE FACTS ON WHICH THIS ACCUSATION IS MADE ARE OF MY OWN KNOWLEDGE OR ON INFORMATION AND BELIEF AS FOLLOWS:

Information/Complaint

A. OF MY OWN KNOWLEDGE and based on information and belief, said belief being the seizure of obscene material, a person is guilty of obscenity when, knowing its content and character he: Promotes, or possesses with intent to promote, any obscene material, to wit; at the afore mentioned time and place, defendants did:

COUNT ONE: Possesses 400 books which depicts and describes in an offensive manner deviate sexual intercourse and deviate sexual acts.

COUNT TWO: Possesses 474 movie reels which depicts and describes in an offensive manner deviate sexual intercourse, deviate sexual acts and beastiality.

COUNT THREE: Possesses 26 Movie projectors, five with sound, which depicts and describes in an offensive manner deviate sexual intercourse and deviate sexual acts.

WHEREFORE I REQUEST THAT A WARRANT BE ISSUED FOR THE ARREST OF THE DEFENDANT

/s/ J. A. HURBANEK
Complainant

Information/Complaint

NOTE: False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law

Sworn to before me this
15th day of July, 1976

/s/ JOHN O'CONNOR
(Signature)
Town Justice
(Title)

Relevant Documents Pertaining to the Search and Seizure

LOCAL CRIMINAL COURT
Town of Wawayanda

AFFIDAVIT

IN THE MATTER

—of—

THE APPLICATION OF INV. J. A. HURBANEK OF THE NEW YORK STATE POLICE, FOR A SEARCH WARRANT TO SEARCH THE FOLLOWING PREMISES: A single story brown wood frame building named "Adult Store", located on Route 17M directly across from the Chadwick Motel in the Town of Wawayanda, Orange County, New York.

STATE OF NEW YORK,
COUNTY OF ORANGE, *ss.*:

I, JOHANNES A. HURBANEK, being duly sworn, deposes and says:

1. I am the applicant herein and am a public servant of the kind specified in Criminal Procedure Law, Section 690.05(1), my title being Investigator with the Bureau of Criminal Investigation of the New York State Police.

2. There is reasonable cause to believe that certain property hereinafter described may be found in the following premises: a single story brown wood frame building named "Adult Store", located on Route 17M directly across from the Chadwick Motel in the Town of Wawayanda, Orange County, New York.

Affidavit of Investigator J. A. Hurbanek

3. The property referred to sought to be seized is property that has been used and is possessed for the purpose of being used to commit an offense to wit: Obscenity in the Second Degree, in violation of Section 235.05(1) of the Penal Law, Promoting Obscene Material.

3. In support of your deponent's assertion as to the existence of reasonable cause, the following facts are offered based upon personal knowledge as attested to by your deponent. On June 20, 1976, I personally was present in the aforedescribed premises (Adult Store) and purchased from Alexander Mandakis one reel of 8mm motion picture film approximately 200 feet in length called LINDA AND DUKE. Upon viewing this reel of motion picture film, I observed it to contain acts of female masturbation and activities involving beastiality in that a female participant in the movie attempted to engage in acts of sexual intercourse with a German Shepard type dog. I also purchased a reel of super 8mm motion picture film approximately 200 feet in length entitled FOUR FOR DINNER. Upon viewing this reel of film, I observed acts of sexual intercourse, sodomy, fellatio, cunnilingus, and masturbation. These reels of film are presently in my possession and are available for the viewing of the Court so that it may independently determine whether or not the acts portrayed come within the statutory prohibition under Article 235 of the Penal Law.

4. While in the premises, I observed what I have reasonable cause to believe are the same or similar films. I also observed in the premises other reels of film, magazines and other objects. Based upon my observations, and my conversations with Mr. Mandakis which indicated to me that

Affidavit of Investigator J. A. Hurbanek

the films and magazines portrayed similar activities as described above, I have reason to believe that this material is being possessed in violation of Article 235 of the Penal Law of the State of New York.

5. The foregoing represents the grounds for my belief.

6. It is further respectfully requested that the Court accompany deponent at the time of the exectuion of the warrant applied for so that it can independently determine under the applicable legal principles whether or not any of the additional material present in the aforedescribed premises is in fact possessed in violation of the law and therefore subject to seizure.

WHEREFORE, your deponent requests that the Court issue a search warrant directing a search for and seizure of the following property:

1.) 200 foot reels of 8mm motion picutre film entitled LINDA AND DUKE.

2.) 200 foot reels of super 8mm motion picture film entitled FOUR FOR DINNER.

3.) Any other material that the Court may independently determine upon viewing to be possessed in violation of Article 235 of the Penal Law.

/s/ J. A. HURBANEK
Johannes A. Hurbanek

Sworn to before me this
25 day of June, 1976.
/s/ JOHN O'CONNOR, *T.J.*

LOCAL CRIMINAL COURT
Town of Wawayanda, County of Orange,
State of New York

HONORABLE JOHN O'CONNOR,
Issuing Judge.

TO ANY POLICE OFFICER OF THE NEW YORK STATE POLICE

You are hereby authorized and directed to search the following premises: a single story brown wood frame building named "Adult Store", located on Route 17M directly across from the Chadwick Motel in the Town of Wawayanda, Orange County, New York.

You are hereby authorized and directed to search for and seize the following property, to wit:

1.) 200 foot reels of 8mm motion picture film entitled LINDA AND DUKE.

2.) 200 foot reels of super 8mm motion picture film entitled FOUR FOR DINNER.

3.) The following items that the Court independently has determined to be possessed in violation of Article 235 of the Penal Law:

1. Pretty #2, 2 copies
2. Hard Reamers, Vol. 1, #1, 1 copy
3. Sex Act, Bk. 1 (1)
4. Orgy 200 (1)
5. First Me (2)
6. Special Gift (2)
7. Hard-On Haven (1)

8. Sex and Ecsasty (3)
9. Playful Lovers (2)
10. Hard Act, Vol. 1, #1, (1)
11. Primer for Sexual Education, Vol. 8, (1)
12. Sex'ionary, Vol. 1, #2 (1)
13. Enrapt Pairs, Vol. 1, #1 (1)
14. Lips and Tongue Sex, (1)
15. Carnel Knowledge, Vol 2, #3 (1)
16. Amour (6)
17. Carnel Bk. 1, (2)
18. Sexual Release, Vol. 1 #1 (1)
19. Hot and Horny (1)
20. Literotica Vol. 1, #1 (2)
21. Erotiton Bk. 2 (2)
22. Party Girl #2, (1)
23. Sluts (2)
24. Nique (2)
25. Sex Seekers Vol. 1, #1 (1)
26. Valerie (1)
27. Afro Fuck Inter Racial (1)
28. Piss Ass (2)
29. Inter Play Vol. 1, #1 (1)
30. Organism Bk. 1 (2)
31. All Color Poker, (2)
32. Sex Strokers, Vol. #1, (2)

/s/ JAH

33. Sex on Campus (2)
34. Teach me to take It (1)
35. Sex Critique (4)
36. Real Sex (4)
37. The American Sex Scene Vol 4 (1)
38. The American Sex Scene Vol. 3 (3)
39. Sizzling Hot (1)

40. Pleasure Bk. 2, (2)
41. Fuckum (3)
42. Sex and The Swinging Singles Vol. 1, Bk. 1, (2)
43. Cherry Pie, Vol. 1, #1, (2)
44. The Good Life Vol. 1, #2 (1)
45. Single Swingers (5)
46. Answers, Vol. 1, #3 (1)
47. Sexcope Vol. 1 #4, (1)
48. Sex in America Bk. 3 (1)
49. Electra, Vol 6, #2 (1)
50. Sexual Pursuits, #2 (2)
51. Response, Vol. 5, #1 (2)
52. Sex World, Bk. 5 (1)
53. Woman Together, Vol. 1, #2 (1)
54. Hells Bedroom (4)
55. Sex Drive, #5, (1)
56. Sex and Pornography #4, (1)
57. Sex and Pornography #1, (1)
58. Hot and Hung (1)
59. Weekend with the Boss (2)
60. The Sex Scene (1)
61. A Dream Cums True (3)
62. Toppers Vol. 1, #1, (1)
63. Sexways Vol. 1, #1 (1)
64. Dreamy Sisters (4)
65. A Models Story (1)
66. Informed, #3, (1)
67. Informed, #7, (1)
68. Informed, #5, (3)
69. Sex and the Single State, Vol. 1, #1 (1)
70. Fly Her Frieidly Thighs, (1)
71. Love and Lust (1)
72. Suckfest (3)

73. The Devil Made Me Do It Vol. 1, #3 (6)
74. Get Down with-3, (1)
75. Prince #10, (5)
76. Partner #2, (3)
77. Selecta (2)
78. Prince #11, (2)
79. Anal-Sex, #12, (1)
80. Con Amore #9, (1)

/s/ *JAH*

81. Private #20, (1)
82. Private #18, (2)
83. Dream (10)
84. Climas #208 (1)
85. Climax #207, (1)
86. Prince #8 (3)
87. Danish Games, Vol. 1 #7, (1)
88. Partner #1, (1)
89. Partner #4, (5)
90. Ero #5, (1)
91. Ero #6 (1)

The above Books are from wall "A".

The following are books located on center table:

1. Call Boy #5 (1)
2. Virgin Territory (2)
3. The Oriental Split #1
4. Whoring Hichhikers, Vol. 1, #2
5. Teen Teasers, Vol. 1 #2
6. Naked
7. Mother Truckers, Vol. 1, #3
8. Throb (6)

9. Switch Vol. 1, #1
10. Hump #5, (15)
11. World of Love and Sex, Bk. 7
12. Close-Up, Vol. 2, #5
13. Primates, Vol. 1, #1
14. Climax (5)
15. The Many Faces of Philbert Foxhunt (9)
16. Swing, #5
17. Eroctic Humor, Vol. 2, #2, (4)
18. Mike's Muscle
19. Greek Lightning
20. Straight to the End, #1 (3)
21. Coming My Way, Stud #1, (2)
22. Less Love, Vol. 1, #1
23. Leather Bondage Techniques, Vol. 1
24. The Cruiser, Vol. 3
25. Visitors Welcome, Vol. 1, #1 (2)
26. The Long Horns, Vol. 1, #1
27. Blast Off, #2
28. My-O-My, Vol. 2
29. Garden Tools, Vol. 1, #1
30. Humpy Jocks, First Issue

/s/ JAH

31. Finger Lickin Good
32. Keep on Coming, Stud No. 4
33. Chain Male, #3
34. Strangers in the Night, #1
35. Head Strong
36. Meat Rack, Vol. 1, #1
37. Caught Hot Handed, Vol. 1, #1
38. Swinging in the Rain, Far Out #2
39. The Best of Town, #1

40. I'll pay By the Inch, #1
41. Modern Girls, #1
42. Enjoy, #1
43. Reflections of Youth
44. Sock it to Me (3)
45. The Gay Cure
46. Chicken Delite (3)
47. Aces, Vol. 1, #1
48. Prickly Heat, Stud #2
49. Stud Time, Issue 1
50. Chains
51. Combo #1
52. Flesh Parad
53. Mod Age, Vol. 1, #4
54. Bodies in Bondage, Vol. 1, #3
55. Everybody Needs Meat, Stud #3
56. Heavy Hitters, Vol. 1, #1
57. Cock Crazy Kids, (3)
58. The Best of Tom, #2
59. Tempt'n Teens
60. Genitalia
61. The Phallus

/s/ JAH

The following books were located on the rear wall

1. Blast Off, #2
2. Coming Up Strong, #2
3. Greek Lighting, #4
4. Blast Off, #1
5. Hard to Handle, #2
6. Tongue 'n Cheek
7. The Defiled Facist #4
8. Coming My Way, Stud no. 1

9. Man's Best Friend, Kinicks #5
10. Keep on Coming, Stud No. 4 (2)
11. Cock Crazy Kids
12. Hard Up House Boy
13. Straight to the End, #1
14. Making It Big in San Francisco
15. Virgin Territory (2)
16. Colorviews (2)
17. Take It as It Comes
18. Prickly Heat, Stud No. 2
19. The New Dudes, Vol. 1, #2
20. Try It for Size
21. Leather Bondage Techniques, Vo. 4
22. The Cruiser, Vol. 3
23. Cock Rings, Chains and Things, (2)
24. Hustling Dudes, Vol. 1, #1
25. Chicken Delite
26. Tweak
27. I'll Pay By the Inch, #1
28. Body Motions
29. Swing In The Rain
30. The Bigger They Come, Vol. 1, #1
31. Erotic Hands, (2)
32. Boy Chicks, Vol. 1, #1
33. Meat Rack, Vol. 1, #1
34. The Intruder
35. Brutle Birthday Knights of the Night, No. 2
36. /s/ *JAH*

The following books were located in boxes behind the front

1. Private #22
2. Private #18
3. Private #21
4. Teenagers Loving Weekend, Volumne 1, #1
5. Succotash Volumne 1, #2
6. Answers, Volumne 5, #3
7. The Sinners
8. Curious, #6
9. Marriage Carousel
10. Enjoy
11. Full Swing
12. Sex Reflection #5, Volumne 1, #1
13. Sticky Fingers, Volumne 1, #1
14. Mated, #2
15. The Paperboy, LLP/2019
16. Response, Volumne 4, #4
17. Pleasure, Volumne 1, #2
18. Teacher's Pets SLP/1008
19. Auntie Loves Me
20. Sexscope, Volumne 4, #4
21. Substitute Wife, #635
22. Teenage Sandwich, T-202
23. Sexual Behavior and the Law, Volumne
24. Hold His Cock, 7/203
25. Manuals of Sex Magic, OSL/9617
26. Study of Wife Swapping, Series 1002

Books behind front counter

1. Liquid Plumber, Kiniks, No. 6
2. Strangers in the Night, No. 1

3. Mandate, Volumne 1, #1
4. Drawn and Quarters, #1
5. Gay Studs, Volumne 5, #1
6. Afro Fuck
7. Feminine Hygiene and Masturbation
8. Naked Nurses, Volumne 6, #4
9. Unnatural Sex Acts
10. Trusting Couples, Volumne 1, #1
11. Games People Play
12. Orgasm, Volumne 1, #1
13. The Teacher's Wife CCP/3013
14. Stick It In
15. Young Hard Studs, Volumne 1, #1
16. Hard Heads
17. The Sinners
18. Hard Up Houseboy
19. Stiff Pricks

/s/ JAH

20. Hot and Horny, Volumne 1
21. Head On
22. Solo Sex, Female Masturbation, #2
23. Sexdrive, #6
24. Dirty Martha
25. Fucking Freaks
26. Tongue Lashing, Ball #4
27. Casebook, Volumne 2, #1
28. Get Down with-3
29. Fuck Free
30. Orgy, No. 3, #30
31. Ankh, Volumne 6, #2
32. Sexualis, Volumne 1, #1

33. Explicit, Volumne 1, #2
34. Swingers, #31, #3
35. Right One
36. Triple Headers
37. Around the World
38. Hookers, #1
39. Sex, Singles and Society, #9630
40. Animal 14,

/s/ JAH

THE FOLLOWING ITEMS SEIZED FROM PROJECT BOOTHS & ROOMS

Booth #1, One film depicting two white females, one white male, acts of sodomy and intercourse, Bolex 18 5L projector.

Booth #2, One film depicting white male and negro female, acts of sodomy and intercourse, Vivitar projector

Booth #3, One film depicting white male and white female, acts of sodomy and intercourse, Vivitar projector

Booth #4, One film depicting white male and white female, acts of sodomy and intercourse, Vivitar projector

Booth #5, One film depicting white male and white female, acts of sodomy and intercourse, Vivitar projector

Booth #6, One film depicting white male and white female, acats of sodomy and intercourse, Vivitar projector

Booth #7, One film depicting two white females acts of fingering and use of dildos, Vivitar projector

Booth #8, One film depicting two white females and white male acts of sodomy and intercourse, Vivitar projector

Booth #9, One film depicting one white male and white female joined by second white male, acts of sodomy and intercourse, Vivitar projector

Booth #10, One film depicting two white males, acts of sodomy, Vivitar projector

Booth #11, One film depicting white male and white female joined by another white male and white female, acts of sodomy and intercourse, Bolex, 18-5L projector.

Booth #12, One film depicting white female and white male, acts of sodomy and intercourse, Vivitar projector

Booth #13, One film depicting white female and white male, acats of sodomy and intercourse, Urban Industries projector.

Booth #14, One film depicting two white females and negro male, acts of sodomy and intercourse, Vivitar projector

/s/ *JAH*

Booth #15, One film depicting two white females acats of sodomy Urban Industries Projector

Booth #16, One film depicting one white male and white female, acts of sodomy and intercourse, Vivitar projector

Booth #17, One film depicting acts of sodomy, masturbation and intercourse in an animated cartoon of Snow White and the Seven Dwarfs, Vivitar projector

Booth #18, One film depicting white male and white female wherein the white female is covered by various food items which appear to be of a banana split, Vivitar projector

Booth #20, One film depicting three white males, acts of sodomy, one Vivitar projector and coin box.

Booth #21, One film depicting white male and white female, acts of sodomy and intercourse with sound videotronic projector and coin box and speaker.

Booth #22, One film depicting a negro female and white male, acts of sodomy and intercourse with sound videotronic projector and coin box.

Booth #23, One film depicting white male and white female, acts of sodomy and intercourse with sound videotronic projector and coin box and speaker.

Rear Room #1 on left—
White male, white female on one film, and two negro females and white male on second film, videotronic sound camera and Vivitar projector

Rear Room #2 on right
One film, two white females, one white male, titled "Eat Me Good", depicting acts of sodomy and intercourse and one film showing two white males youths acts of masturbation and sodomy, videotronic sound camera and Vivitar projector, and black wood box with coin machine attachment.

/s/ *JAH*

Front Counter Area

Target Systems, Super 8 self-contained cartridge movie projector with sound and one cartridge showing white male white female, acts of sodomy and intercourse

2 JAYARK Tricon Super 8 self-contained cartridge movie projector with sound with 3 cartridges depicting acts of sodomy and intercourse

10 Mannikins displaying sexually explicit items of clothing

1 Accu-jack unit

/s/ *JAH*

The following films from the Front Counter Display Area:

Dynamite #9
Donimant Trio Part B
Lusty Girls #2
Golden Shower #4 & #3
Kinky K ds KK-4 & KK-6
Sexciting #5
Hot Heroines HHF 1 & 3
Sensous Strangers #121 and 126
Bottons Up #6
Sound #43 and 42 and 45
#4 SUP COL
Pent House #PP17 and 21
Smokers SM 3 (2)
Slice of Cunt
Cock Party
School Girls, #1, reg col
Tricks and Dicks
Jade #3 and #6
The Rabbit and the Fox
Piggy and the Cat
Clitoria
Orgy EROTICA (2)
Fuck or Else
Tampax Freak
Swinging Maid T.W.5
Lunny Birds
Fit for a Queen (2) #3 and #1
Oriential Sex Pot (2)
Sensuous Strangers #123

Sensation Sex #2
Seduced #7 and #10
Satan #1 (2), #3; #4; #5; #6 (2) and #9
Porno Classics PC2
Valentino Series Lez Delivery
Rear End Frolics Presents #1, #2, #3, #5 and #4
Cream C6; C7; C8; and C9 (3)
White Pussy TF1 (2)
Playmate #26
Oz Films, Slave Fucking
Oz Films #'s 76, 77, 78, 79
Screw SP 25; 34; 26, (2); 27; 28; 32; 36
Hollywood Swingers HS25 and 26
All the Way #1, (2) and #4
Wet and Warm
Junior Cadets #2, 3, 4 and 5
Vamps "N" Tramps (3)
The Grovers TGF (2)

/s/ JAH

Sex Machines SM 5 and 6
Pretty Boy #'s 1, 2, 5, 9 PB13, PB15, PB16
FUCKED
Sensation Sex
Sensation Sex, Part I (2) Part II
Plunge I
Fit for a Queen #4 and 5
Domino #1 and 4
Kinghts of the Night KNF 1, 4, 5 and 6
Orange Blossom #6, 7 (2), 9, 10 (2)
Sensuous Strangers #129
Dream Boy (2)
All the Way #2 and 4

Hot Heroines HHF5
Freak Out M-1; M-2; M-3; V 3 (2)
Action #1 (2); #3, #4 (2) an #6
The Sex Servants Part II Master of the House
Jocks, #1, 23, 4, 5&6

The following films are from the rear counter display area:

This is a Lasse-Braun LB37 (white box's 6)
Linda and Duke
Green Box Depicting Girl and Eel
Kiniks KSF1, 2, 4
Sue and Duke
Piggy and the Cat
Sex Machines SM1
Pretty Boy PB16
Pretty Boy 3 reels taped together
Three white boxes marked Male special

/s/ JAH

Color Climax #5
Jocks Scoring a Basket
Junior Cadets ICF1
Slice of Cunt
Screw SP33 (2) and #37
Sensation Sex Part I
Fahrenheit 220 #'s F1, F2 & F6 (2)
Hand Fucker #1710
French Treasers #104
Canddle Light #3
Porno Classics #'s 9, 10, 11, 12, 13, 14, 15&16

/s/ JAH

#9 COL (red and green box)
Flash Point #'s 1, 2, 3, & 6
Homemade Love
Sex Bizarre #6
Pent House #PP18
Fahrenheit 220 F4
The Sex Lovers #2 and 3
Wilder Lust #8
Chicks and Dicks #'s 1, 2, & 5
Lollipop #1, 3, 4, 5, & 7
Hot Stuff 3, 5 & 6
Parisina #37(2); #38(2)
Valentino Series (Hot dog man (2) & Cocktails for Two, Stocking Rape)
Orange Blossom #7; 8; & 9; 10(2)
Red Plastic Box s #'s 1(3); #3(4)
Continental Classics, Series 1 #2 and #4, Series 2, #7, #9, #10.
2 Sealed packages consisting of two reels containing Sex Deviates #7 and X-Rated #4
Golden Shower #5
Paris Nights #3
Sex Citing #3
Lesbian Dominatrixes Part A
Dog Tamer K 9 PART I (2); Part II (4)
Back Door (2)
DW 58
Thrill Seekers #2
Shocking #'s LB40(2); 41 and 42
Danish Films #1002(2) and 1004
Action #1, 2, 4 & 6
Sex, American Style #'s 1(2), #3, 4, 5, 6, 7, 8, 9, & 10

Venutre #'s 4, 5, 6, 7, 8
Hollywood Swingers #'s HS23, 25, 27,
The Devil in Miss Jones
The Devil in Miss Jones, Part I, II, III & LVKV
X RATED 3
The Collection #24, (2); 23(2); 22 and 21
Dominio #'s 2, 3 & 5
Dynamite #'s 1(2); #2(2); #5(2) #6(2), #8
Thrill Seekers, #'s 1, 3, 4, 5 & 6
Pretty Boy #'s 1(2); #2 and #5
Fit for a Queen #2
Plunge #1, #2(3)
Freak-Out M-2(2)
Knights of the Night KKF3(2) 5 and 6
Freak Out M-1 (2)
Fuck Tastik #'s 1(2); 2(2); 3(2); 4(2) and 5
Heads Up Action #'s 1-10
Heads Up Action (whiteboxes #'s 1-10)
America #'s 1-6
KAMA SUTRA #'s 1(2); #3(2) 3 and 4
Lust Films, #'s 1(2); 2(2); 3(2); 4(2) and 5(2)
The Groovers, #'s TGF #1(2); #2(4); #3(3); #4(4) #5(3), #6(2)

/s/ JAH

Tenill Presents Quade Part I
San Francisco Pick-Up (2)
Child Molester
Country Counsins (2)
Pretty Pets (2)
Teenage Trip

D & W Mink 7,
1 sealed reel marked color

1 reel marked play mate #26-r-8
1 reel marked "The Collection" #22

Magazines

Party Girls 1 & 2
All Color Special #1, (3); #2(2); #3; #4(3)

16 mm film

Black Angus
This is the Life
Lesbian Paradise
Hindu Life
Cocks Dancing School
R-3 Club
Jade #2 and 4 8mm
Golden Shower #2 8mm
TL3 8mm
1 reel—Vamps 8mm
1 red reel 8mm no title
1 reel 8mm in black box initialed F.L.
3 reels of film in paper bag marked "Shit"

Magazines

The Oriental Bride (2)
Reward from Teacher
Smnall Town Beauty
Gayboy Volume 1, #2
Leather Bondage techniques Vol. 3
OOH! #11, (2)
Erotic Humor Vol. 2 #1
Love #34 (2)

/s/ JAH

8 plastic bags and 1 large cardboard box containing assorted items of obscene material for over the counter sale

1 obscene ring toss game

1 box containing business records

2 paralyzer tear gas aerosol chemical canister

/s/ *JAH*

This warrant must be executed not more than 10 days after the issuance and any property seized pursuant hereto shall be returned and delivered to the Court without unnecessary delay.

The Court hereby specially determines that this Warrant shall constitute notice to any persons arrested or charged pursuant to its execution, that they are entitled to immediate adversary hearing, as soon as practicable, so that a determination can be made as to whether or not the material seized was possessed in violation of Article 235 of the Penal Law.

DATED: Goshen, New York
June 25, 1976

/s/ JOHN O'CONNOR
Local Justice

NEW YORK STATE POLICE
SEARCH AND SEIZURE
RECEIPT AND INVENTORY

LOCAL CRIMINAL COURT

Town of Wawayanda

COUNTY OF ORANGE, N.Y. *ss.*:

I swear that the following is a true and detailed inventory of all property taken by me on the warrant filed herewith:

The following listed items on attached Fourteen (14) pages per direction Town Justice JOHN O'CONNOR, in search warrant issued June 25, 1976.

/s/ J. A. HURBANEK

Subscribed and sworn to before me
this 26th day of June, 1976.

/s/ JOHN O'CONNOR,
Town Justice

The following items were seized from the Adult Store on Route 17 pursuant to the execution of a search warrant issued on June 25, 1976:

WALL "A"

1. Pretty #1 (2)
2. Hard Reamers, Volume 1 #1 (1)
3. Sex Act, Book 1 (1)
4. Orgy Too (1)
5. First Me (2)
6. Special Gift (2)
7. Hard-On Heavan (1)
8. Sex and Ecstasy (3)
9. Playful Lovers (2)
10. Hard Act, Volume 1 #1 (1)
11. Primer for Sexual Education Volume 8 (1)
12. Sex'ionary Volume 1 #2 (1)
13. Enrapt Hairs Volume 1 #1 (1)
14. Lips and Tongue Sex (1)
15. Carnal Knowledge Volume 2 #3 (1)
16. Amour (6)
17. Carnal Book I (2)
18. Sexual Release Volume 1 #1 (1)
19. Hot and Horny (1)
20. Literotica Volume 1 #1 (2)
21. Erotiton Book II (2)
22. Party Girl, #2 (1)
23. Sluts (2)
24. Nique (2)
25. Sex Seekers Volume 1 #1 (1)
26. Valerie (1)

27. Afro Fuck Interracial (1)
28. Piss Ass (2)
29. Interplay Volume 1 #3 (1)
30. Orgasm Book I, (2)
31. All Color Poker (2)
32. Sex Strokers Volume I, #1 (2)
33. Sex On Campus (2)
34. Teach Me to Take It (1)
35. Sex Crique (4)
36. Real Sex (4)
37. The American Sex Scene Volume 4 (1)
38. The American Sex Scene Volume 3 (3)
39. Sizzling Hot (1)
40. Pleasure Book 2 (2)
41. Fuckum (3)

/s/ JAH

42. Sex and Swinging Single Volume 1 Book 1 (2)
43. Cherry Pie Volume 1 #1 (2)
44. The Good Life Volume 1 #2 (1)
45. Single Swingers (5)
46. Answers Volume 1, #3 (1)
47. Sex Scope Volume 1, #4 (1)
48. Sex in America Book 3 (1)
49. Electra Volume 6 #2 (1)
50. Sexual Pursue, #2 (2)
51. Response Volume 5 #1 (2)
52. Sex World, Book 5 (1)
53. Women Together, Volume 1 #2 (1)
54. Hell's Bedroom (4)
55. Sex Drive #5 (1)
56. Sex and Pornography #4 (1)

57. Sex and Pornography #1 (1)
58. Hot & Hung (1)
59. Weekend with the Boss (2)
60. The Sex Scene (1)
61. A Dream Cums True (3)
62. Toppers Volume 1 Book 1 (1)
63. Sexways Volume 1 #1 (1)
64. Dreamy Sisters (4)
65. A Model Story (1)
66. Informed #3 (1)
67. Informed #7 (1)
68. Informed #5 (3)
69. Sex and the Single State Volume 1 #1 (1)
70. Fly Her Friendly Thighs (1)
71. Love and Lust (1)
72. Suckfest (3)
73. The Devil Made Me Do It Volume 1 #3 (6)
74. Get Down With 3 (1)
75. Prince #10 (5)
76. Partner #2 (3)
77. Selecta (2)
78. Prince #11 (2)
80. Anal Sex #12 (1)
81. Con Amore #9 (1)
82. Private #20 (1)
83. Private #18 (2)
84. Dream (1)
85. Climax #208 (1)
86. Climax #207 (1)
87. Prince #8 (3)
88. Danish Games Volume 1 #7 (1)

89. Partner #1 (1)
90. Partner #4 (5)
91. Ero #5 (1)
92. Ero #6 (1)

/s/ JAH

Books located on center table:

1. Call Boy #5 (1)
2. Virgin Territory (2)
3. The Oriental Split #1 (1)
4. Whoring Hitchhikers Volume 1 #2 (1)
5. Teen Teasers Volume 1 #2 (1)
6. Naked (1)
7. Mother Truckers Volume 1 #3 (1)
8. Throb (6)
9. Switch Volume 1 #1 (1)
10. Hump #5 (15)
11. World of Love & Sex Book 7 (1)
12. Close-Up Volume 2 #5 (1)
13. Primates Volume 1 #1
14. Climax (5)
15. The Many Faces of Philbert Foxhunt (9)
16. Swing #5
17. Erotic Humor Volume 2 #2 (4)
18. Mike's Muscle
19. Greek Lightning [Straight to the End #1 (3)] separate books
20. Coming My Way Stud #1 (2)
21. Les Love Volume 1 #1
22. Leather Bondage Techniques Volume 1
23. The Cruiser Volume 3
24. Visitor's Welcome Volume 1 #1 (2)

25. The Long Horns Volume 1 #1
26. Blast Off #2
27. My-O-My Volume 2
28. Garden Tools Volume 1 #1
29. Humpy Jocks First Issue
30. Finger Licking Good
31. Keep On Coming stud #4
32. Chain Male #3
33. Strangers In the Night #1
34. Head Strong
35. Meat Rack Volume 1 #1
36. Caught Hot-Handed Volume 1 #1
37. Swinging in the Rain (2) Far Out #2
38. The Best of Tom #1
39. I'll Pay by the Inch #1
40. Modern Girls #1
41. Enjoy #1
42. Reflections of Youth
43. Sock it to Me (3)
44. The Gay Cure
45. Chicken Delite (3)
46. Aces Volume 1 #1
47. Prickly Heat Stud #2
48. Stud Time Issue 1
49. Chains

/s/ JAH

50. Combo #1
51. Flesh Parad
52. Mod Age Volume 1 #4
53. Bodies in Bondage Volume 1 #3
54. Every Body Needs Meat Stud #3

55. Heavy Hitters Volume 1 #1
56. Cock Crazy Kids (3)
57. The Best of Tom #2
58. Temptin Teens
59. Genitalia
60. The Phallus

Books located on rear wall:

1. Blast Off #2
2. Coming Up Strong #2
3. Greek Lightning #4
4. Blast Off #1
5. Hard to Handle #2
6. Tongue 'n Cheek
7. The Defiled Facist #4
8. Coming My Way Stud #1
9. Man's Best Friend Kinks #5
10. Keep on Coming Stud #4 (2)
11. Cock Crazy Kids
12. Hard Up House Boy
13. Straight to the End #1
14. Making It Big San Francisco
15. Virgin Territory 2
16. Colorviews (2)
17. Take it as it Comes
18. Prickly Heat Stud #2
19. The New Dudes Volume 1 #2
20. Try it For Size
21. Leather Bondage Techniques Volume 4
22. The Cruiser Volume 3
23. Cock Rings, Chains & Things (2)

24. Hustling Dudes Volume 1 #1
25. Chicken Delite
26. Tweak
27. I'll Pay By the Inch #1
28. Body Motions
29. Swinging in the Rain
30. The Bigger They Come Volume 1 #1
31. Erotic Hands (2)
32. Boy Chicks Volume 1 #1

/s/ *JAH*

33. Meat Rack Volum 1 #1
34. The Intruder
35. Brutal Birthday—Knights of the Night #2

Books behind front counter in boxes:

1. Private #22
2. Private #18
3. Private #21
4. Teenagers Loving Weekend Volume 1 #1
5. Succotash Vol. 1 #2
6. Answers Vol. 5 #3
7. The Sinners
8. Curious #6
9. Marriage Carousel
10. Enjoy
11. Full Swing
12. Sex Reflection #5 Vol. 2 #1
13. Sticky Fingers Vol. 1 #1
14. Mated #2
15. The Paperboy LLP-2019

16. Response Vol. 4 #4
17. Pleasure Vol. 1 #2
18. Teacher's Pets SLP/1008
19. Auntee Loves Me
20. Sexscope
21. Substitute Wife #635
22. Teenage Sandwich T-202
23. Sexual Behavior and the Law Vol. 1
24. Hold His Cock T-203
25. Manuals of Sex Magic OSL-9617
26. A Study of Wife Swapping Series 1002

/s/ *JAH*

Books behind front counter:

1. Liquid Plumber Kinks #6
2. Strangers in the Night #1
3. Mandate Vol. 1 #1
4. Drawn and Quarters #1
5. Gay Studs Vol. 5 #1
6. Afro Fuck
7. Feminine Hygiene and Masturbation
8. Naked Nurses Vol. 6 #4
9. Unnatural Sex Acts
10. Trusting Couple #1 Vol. 1
11. Games People Play
12. Orgasm Vol. 1 #1
13. The Teacher's Wife CCP/3013
14. Stick It In
15. Young Hard Studs Vol. 1 #1
16. Hard Heads
17. Hard Up Houseboy
18. The Sinners

19. Stiff Pricks
20. Hot and Horny Vol. 1
21. Head On
22. Solo Sex Female Masturbation Vol. 1
23. Sex Drive #6
24. Dirty Martha
25. The Fucking Freaks
26. Tongue Lashing Ball #4
27. Case Book Vol. 2 #1
28. Get Down with 3
29. Fuck Free
30. Orgy #3 #30
31. Ankh Vol. 6 #2
32. Sexualis Vol. 1 #1
33. Explicit Vol. 1 #2
34. Swingers #31 #3
35. Right-On
36. Triple Headers
37. Around the World
38. Hookers #1
39. Sex, Singles & Society #9630
40. Animal 14

/s/ JAH

The following items seized from projector booth and room:

Booth #1: 1 Film depicting two white females, 1 white female, act of sodomy and intercourse—Bolex—18-5L Projector

Booth #2: 1 film depicting a white male and a Negro female act of sodomy and intercourse—Vivitar Projector

Booth #3: 1 film depicting white male and white female acts of sodomy and intercourse—Vivitar Projector

Booth #4: 1 film depicting white male and white female acts of sodomy and intercourse—Vivitar Projector

Booth #5: 1 film depicting white male and white female, acts of sodomy and intercourse—Vivitar Projector

Booth #6: 1 film depicting white male and white female, acts of sodomy and intercourse—Vivitar Projector

Booth #7: 1 film depicting two white females, acts of fingering and use of dildos—Vivitar Projector

Booth #8: 1 film depicting 2 white females, and white male, acts of sodomy and intercourse—Vivitar Projector

Booth #9: 1 film depicting a white male and white female, joined by second white male, acts of sodomy and intercourse—Vivitar Projector

Booth #10: 1 film depicting two white males, acts of sodomy Vivitar Projector

Booth #11: 1 film depicting white male and white female joined by another white male and white female, acts of sodomy and intercourse—Bolex 18/5L Projector

Booth #12: 1 film depicting white female and white male, acts of sodomy and intercourse—Vivitar Projector

Booth #13: 1 film depciting white female and white male, acts of sodomy and intercourse—Urban Industries Projector

Booth #14: 1 film depicting two white females and Negro male, acts of sodomy and intercourse—Vivitar Projector

/s/ JAH

Booth #15: 1 film depicting two white females, acts of sodomy Urban Industries Proj.

Booth #16: 1 film depicting white male and white female, acts of sodomy and intercourse—Vivitar Proj.

Booth #17: 1 film depicting acts of sodomy, masturbation, and intercourse in an animated cartoon of "Snow White & the Seven Dwarfs"—Vivitar Proj.

Booth #18: 1 film depicting white male and white female wherein the white female was covered by various food items which appear to be like a banana split.—Vivitar Proj.

Booth #20: 1 film depicting three white males, acts of sodomy 1 Vivitar Proj. & Coin Box

Booth #21: 1 film depicting white male and white female, acts of sodomy and intercourse with sound-Videotronic Proj. & Coin Box & Speaker

Booth #22: 1 film depicting Negro female and white male, acts of sodomy and intercourse with sound, Videotronic Proj & Coin Box

Booth #23: 1 film depicting White male and white female, acts of sodomy and intercourse with sound—Videotronic Proj Coin Box & Speaker

/s/ *JAH*

Rear Room #1 on left: white male white female, on one film and two negro females and white male on second film—Videotronic Sound Camara & Vivitar Proj.

Rear Room #2 on right: 1 film 2 white females 1 white male entitled "Eat Me Good" depicting acts of sodomy

and intercourse and 1 film showing 2 white male youths, acts of masturbation and sodomy—Videotronic Sound Camera—Vivitar Proj.—Lock Wood Box with Coin Machine Attachment

Front Counter Area: Target System Super 8 Self contained cartridge movie proj. with sound and 1 cartridge showing white male, white female, acts of sodomy and intercourse.

/s/ *JAH*

Front Counter Area: 2 Jayark Tricom Super 8 Self Contained Cartridge Movie Proj. with sound with three cartridges, depicting acts of sodomy and intercourse.

10 mannikins displaying sexually explicit items of clothing

1 accu-jac unit

/s/ *JAH*

The following films from the front counter display area:

Dynamite #9
Dominant Trio Part B
Lusty Girls #2
Golden Shower #4 & #3
Kinky Kids KK-4 and KK-6
Sexciting #5
Hot Heroines HHF 1 & 3
Sensuous Strangers 121 & 126
Bottoms Up #6
Sound #43 & 42 & 45
#4 Sup Col
Penthouse #PP17 & 21

Smokers SM-3 (2)
Slice of Cunt
Cock Party
School Girls #1 Reg Coll
Chicks & Dicks
Jade #3 & 6
The Rabbit and The Fox
Piggy & The Cat
Clitoria
Orgy Erotica (2)
Fuck or Else
Tampax Freak
Swinging Maid TW 5
Looney birds
Fit For a Queen No. 1 & 3
Oriental Sexpot (2)
Sensuous Strangers #1, 2, 3
Sensation Sex No. 2
Seduced #7 & #10
Satan #1 (2 copies); #3; #4; #5; #6 (2); #9
Porno Classics PC-2
Valentino Series Lez Delivery
Rear End Frolics Presents #1, #2, #3, #5 & #4
Cream C6, C7, C8, C9 (3)
White Pussy TF1 (2)
Playmate #26
Oz Films, Slave Fucking
Oz Films Presents, #76, 77, 78, & 79
Screw SP25 & 34, 26, (2), 27, 28, 32, & 36
Holywood Swingers HS-25 & 26
All The Way #1 (2), 4
Wet & Warm

Junior Cadets #2, 3, 4, & 5
Vamps "n" Tramps

/s/ JAH

The Groovers TGF #1 (2)
Sex Machines SM5 & 6
Pretty Boy #1, 2, 5, 9, PB13, PB15, & PB16
Fucked
Sensation Sex
Sensation Sex Part 1 (2) & Part 2
Plunge 1
Fit For a Queen No. 4 & 5
Donimo No. 1 & 4
Knights of the Night KNF 1, 4, 5, & 6
Orange Blossom #6, 7 (2), 9, 10, (2)
Sensuous Strangers #129
Dream Boy (2)
All the Way #2 & 4
Hot Heroines HHF5
Freak Out M-1, M-2, M-3, V-3 (2)
Action #1 (2), 3, 4 (2), 6
The Sex Servants Part 2, Master of the House
Jocks #1, 2, 3, 4, 5, & 6

The following films from the rear counter display area:

This is A Lasse Braun—LB37 (White Boxes) (6)
Linda & Duke
Green Box depicting girl and Eel
Kinks KSF1, 2, 4, & 6
Sue & Duke
Piggy and the Cat
Sex Machines SM 1

Pretty Boy PB 16
Pretty Boy (3 reels taped together)
3 White Boxes marked Male Special
Color Climax #5
Jocks—Scoring a Basket
Junior Cadets ICF 1
Slice of Cunt
Screw SP 33, (2), #37
Sensation, Sex Part 1
Fahrenheit 220 #F1, F2, & F6
Handfucker No. 1710
French Teasers No. 104
Candlelight No. 3
Porno Classics No. 9, 10, 11, 12, 13, 14, 15, & 16
No. 9 Reg Col (Red & Green Box)
Flash Point # 1, 2, 3, & 6
Home Maid Love
Sex Bizarre #6
Penthouse #PP18
Farenheit 220 F4
The Sex Lovers, #2, 3

/s/ JAH

Wilder Lust #8
chicks & Dicks 1, 2, & 5
Lollipop #1, 3, 4, & 5, & 7
Hot Stuff 3, 5, & 6
Parisiana #37, (2 copies) #38 (2)
Valentino Series (Hot Dog Man (2)) Cocktails for Two & Stocking Rape
Orange Blossom #7, 8, 9, 10(2)
7 Red Plastic Boxes #1 (3), 3, (4)

Continental Classics Series 1, #2 & 4, Series 2, #7, 9, 10
2 Sealed Packages consisting of 2 reels containing sex deviates, #7 & X-rated #4
Golden Shower #5
Paris Nights #3
Sexciting #3
Lesbian Dominatrixes Part A
Dog Tamer, K9, Part 1, 2 films; Part 2, 4 films
Back Door (2)
DW58
Thrill #2
Shocking No. LB40, (2), 41, 42
Danish Films #1002 (2), 1004
Action #1, 2, 4, 6
Sex American Style Nos. 1 (2), 3, 4, 5, 6, 7, 8, 9, 10
Venture No. 4, 5, 6, 7, 8
Hollywood Swingers No. HS 23, 25, 27
The Devil in Miss Jones
The Devil in Miss Jones Parts 1, 2, 3, 4
X rated 3
The Collection #24, (2), 23, (2), 22, 21
Domino #2, 3, 5
Dynamite #1, (2), #2(2), 5 (2), 6 (2), 8
Thrill Seekers #1, 3, 4, 5, 6
Pretty Boy #1, (2), 2, & 5
Fit For a Queen #2
Plunge #1, 2, (3),
Freak Out M-2 (2)
Knights of the Night KNF3 (2), 5 & 6
Freak Out M-1 (2)
Fuck-tastik #1,(2), 2,(2), 3(2), 4(2), & 5
Heads Up Action #1 through 10

Heads Up Action (white boxes) #1 through 10
America #1-6
Kama-Sutra #1(2), 2(2), 3, & 4
Lust Films #1(2), 2(2), 3(2), 4(2), 5 (2)
The Groovers #TGF #1(2), 2(4), 3(3), 4(4), 5(3), 6(2),

/s/ *JAH*

Tenill Presents Quad Part 1
" " San Francisco Pick Up (2)
" " Child Molester
" " Country Cousins (2)
" " Pretty Pets (2)
" " Teenage Trip
D & W Mink 7
1 Sealed Reel Marked "Color"
1 Reel Marked "Playmate" #26-R-8
1 Reel Marked "The Collection" #22

Magazines:

Party Girls #1 & 2
All Color Special #1(3), #2(2), #3, #4(3)

16 MM Films:

Black Angus
This is the Life
Lesbian Paradise
Hindo Life
Cocks Dancing School
R-3 Club
Jade #2 & 4 (8mm films)
Golden Shower #2 (8mm film)

(8mm) TL3
" 1 Reel—Vamps
" 1 Red Reel
" 1 Reel in black box initialed F. L.
" 3 Reels in paper bags marked "Shit"
"

Magazines:

The Oriental Bride (2)
Reward from Teacher
Small Town Beauty
Bayboy Vol. 1 #2
Leather Bondage Techniques Vol. 3
Ooh #11 (2)
Erotic Humor Vol. 2 #1
Love # 34 (2)

/s/ *JAH*

8 plastic bags & 1 large cardboard box containing assorted items of obscene material for over-the-counter sale

1 obscene ring toss game

1 box containing business records

2 paralyzer tear gas aerosol chemical cannisters

/s/ *JAH*

Notice of Motion

LOCAL CRIMINAL COURT:

TOWN OF WAWAYANDA

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ALEXANDER MANDAKIS, *et al.*,

Defendants.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of ALEXANDER MANDAKIS, and upon all the pleadings and proceedings heretofore had herein, the undersigned, as attorneys for Defendants ALEXANDER MANDAKIS and LOJI SALES, INC., will move this Court, at the courthouse thereof in the town of Wawayanda, County of Orange, State of New York, at a term thereof, on the 30th day of July, 1976, at 7:30 p.m., or as soon thereafter as counsel can be heard, for an order suppressing all of the evidence seized in the above entitled action and returning them to the said Defendants forthwith on the grounds that all of said material was seized in violation of the rights of the said Defendants under the First, Fourth and Fourteenth Amendments of the United States Constitution and the comparable provisions of the New York State Constitution, and granting to

said Defendants such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 29, 1976

Yours, etc.

KASSNER & DETSKY, P.C.
Office and Post Office Address
122 East 42nd Street
New York, New York 10017
Telephone: 212 682-6600
Attorneys for Defendants
Loji Sales, Inc. and
Alexander Mandakis

To: District Attorney
Orange County
State of New York

Affidavit of Alexander Mandakis

LOCAL CRIMINAL COURT:

TOWN OF WAWAYANDA

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ALEXANDER MANDAKIS, *et al.*,

Defendants.

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ALEXANDER MANDAKIS, being duly sworn, deposes and says:

On June 25, 1976, at approximately 11:00 in the morning, over a dozen state troopers, various district attorneys, and Judge O'Connor of the Town of Wawayanda, entered the adult bookstore on Route 17M in New Hampton, New York ordered customers in the store to leave the store, placed me under arrest, and commenced to search the entire store and seized approximately $15,000.00 worth of merchandise from the store.

I was the clerk employed in the store at the time of the said seizure. The store is engaged in the sale and exhibition of books, magazines, films, motion picture projectors, rubber goods, lotions, pills, clothing, most of which is expressive material protected by the First Amendment. By virtue of the sexually oriented theme of the materials sold

and exhibited in the store, admission to the store is restricted to forewarned consenting adults over the age of 21 years. A sign on the front door of the store reads as follows:

> "Stop—you must be 21 years or older—educational and medical literature of a sexual nature—if material herein offends you please do not enter."

After entering the store and closing it to business, the Judge, District Attorneys, and policemen commenced to tear the cellophane wrappers off of almost all of the books and perused the books. They ordered me to activate the switch which allowed them to view the motion picture films exhibited in the coin operated film machines without inserting coins. They thereupon viewed the films. They went through all of the magazines in the store. The Judge would look at each book and magazine for a few seconds and a man who accompanied him would list the names of each such book and magazine. The Judge started looking at the films exhibited in the coin operated film machines with the man accompanying him listing the names of each.

In the course of this raid, the police tore out four money boxes containing the receipts of the coin operated film machines, damaging the enclosures. They tore out wires from the sitting room walls, broke the glass on projector, pulled a five foot unit off the wall, threw books and magazines around the premises, heaped cellophane covers throughout the premises, and then seized approximately $15,000.00 worth of merchandise including all of the films in the store, all of the projectors held for sale in the store, all of the projectors used in the coin operated film machines, all of the sexually explicit books and magazines,

all of the clothes mannequins with the lingerie on them, all of the rubber goods in the store with the exception of prophylactics, some of the lotions, some of the pills, and some of the simulated books.

After the search was completed, there was delivered to me a search warrant which allegedly listed all of the material seized from the store pursuant to the said search. The said search warrant is annexed hereto and made a part hereof. Also annexed hereto is the affidavit of Johannes A. Hurbanek which allegedly formed the basis for the issues of the aforesaid search warrant. In the said search warrant the said Johannes A. Hurbanek alleges that he purchased two reels of film entitled "Linda and Duke" and "Four for Dinner", both allegedly obscene. It should be noted that the search warrant issued pursuant to the aforesaid affidavit directed in items 1 and 2 thereof the search of the premises and the seizure of the two said films. I am advised by my attorneys that the possession by the prosecuting authorities of two said films obviates the necessity of and militates against the seizure of the same films since the evidence was already in possession of the prosecuting authorities and any further seizure of the same material constituted an attempt to suppress its dissemination prior to a final adjudication of the obscenity thereof, all in violation of the First and Fourteenth Amendments of the United States Constitution.

I am further advised by my attorneys that all of the material mentioned in Item 3 of the warrant was subjected to an illegal search prior to the issuance of the warrant in violation of the First and Fourteenth Amendments. I am further advised by my attorneys, that the seizure of virtually all of the expressive material in the store, including multiple copies of each item, constituted a massive suppressive seizure prior to a final determination of the obscenity of such material, in violation of the First and Fourteenth Amendments. I am further advised that the seizure of the projection equipment used to exhibit the films in the store violated basic First Amendment principles against suppression and the seizure of rubber goods, mannequins, lingerie, projectors held for sale, lotions, and pills, constituted a violation of due process by virtue of its confiscation of non-contraband items without compensation.

By virtue of the foregoing, it is respectfully submitted that plaintiff's motion for suppression of all such items and return thereof be ordered forthwith.

/s/ Alexander Mandakis
Alexander Mandakis

Sworn to before me this
30 day of July, 1976

/s/ John O'Connor, T.J.

Defendants' Memorandum of Law on Motion to Suppress

LOCAL CRIMINAL COURT:

TOWN OF WAWAYANDA

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ALEXANDER MANDAKIS, *et al.*,

Defendants.

THE FACTS

From the affidavit of Alexander Mandakis, the affidavit of Johannes A. Hurbanek, and the search warrant of the Hon. John O'Connor, the following facts become apparent and uncontestable. On June 20, 1976 a police officer entered the store of defendants and purchased two 8 millimeter reels of motion picture film entitled "Linda and Duke" and "Four For Dinner". Believing the said films to be obscene and typical of other films, magazines and other objects in the store, the said police officer submitted an affidavit to Judge John O'Connor, requesting the Judge to accompany him in the execution of a warrant to be issued for the seizure of "additional material present in the aforedescribed premises . . . possessed in violation of the law and therefore subject to seizure." The said affidavits further requested that the court issue a search warrant for the seizure of the two films already purchased by the said police officer and for "any other material that the court

may independently determine upon viewing to be possessed in violation of Article 235 of the Penal Law."

Thereafter, and on June 25, 1976, a massive raid and search was conducted at the premises by the Judge, various officials of the District Attorney's Office, and over a dozen police officers. The details on the said raid are more fully set forth in the affidavit of Mr. Mandakis. Suffice it to say that it appears as if no warrant was issued until after the search of the premises and that the search was conducted without any legal authority whatsoever. It cannot be urged that the search and seizure was necessary to procure evidence in connection with the arrest of Mr. Mandakis since the two films specifically mentioned in Items 1 and 2 of the warrant were already in the possession of law enforcement officials and could have served as a basis for a criminal prosecution for obscenity. Any search and seizure of additional copies of the said material would have constituted a suppressive seizure as opposed to an evidentuary seizure. It cannot be urged that the search and seizure was incidental to an arrest in view of the basic Fourth Amendment mandates of *Chimel* v. *California*, 395 U.S. 752. It cannot be said that the search was pursuant to a lawfully issued warrant since the search uncovered all of the material mentioned in the warrant with the exception of two films previously purchased by the police officer. With respect to this additional material, including the seizure of multiple copies of a single item, there can be no doubt that the seizure was intended to be and was in fact a massive suppressive seizure of virtually all of the expressive material in the store in clear violation of such fundamental First Amendment pronouncements of the Supreme Court as those contained in *A Quantity of Books*

v. *Kansas,* 378 U.S. 205 and *Marcus* v. *Search Warrants,* 367 U.S. 717. It cannot even be said that any of the search and seizure conducted at the premises or the issuance of the warrants was supported by any prior judicial scrutiny as required by *People* v. *Heller,* 29 N.Y. 2d 319, since there is no indication that even the two films purchased by the police officer were ever viewed by Judge O'Connor. As to the seizure of projection equipment used in the exhibition of film in the coin operated film machines, there could be no justification for such seizure in the light of basic First Amendment principles. *Near* v. *Minnesota,* 283 U.S. 697. As to the seizure of non-expressive material held for sale in the ordinary course of trade, under no stretch of the imagination could such projectors, mannequins, clothes, lotions, pills, and rubber goods be considered contraband in violation of the obscenity laws of the State of New York since such material does not constitute expressive matter which portrays sexual activity.

It cannot be overemphasized that most of the books in the store were wrapped in cellophane and could not be subjected to judicial scrutiny without the performance of a search and seizure, to wit, the tearing of the cellophane. The issuance of a warrant after the search and seizure could not conceivably justify the search and seizure. When the raiders entered the store, closed it for business, arrested the clerk, there had been neither prior judicial scrutiny of the material mentioned in the subsequently issued warrant nor probable cause for the issuance of the said warrant. The search and seizure that followed such entry was therefore illegal in violation of the First, Fourth and Fourteenth Amendments of the Federal Constitution.

THE LAW

Prior to the decision of the New York Court of Appeals in 1971 in the case of *People* v. *Heller,* 29 N.Y.2d 319, it was the law in this jurisdiction as in most other jurisdictions throughout the United States that there could be no seizure of expressive material without a prior adversary hearing and judicial determination of the obscenity vel non of such material. *Astro Cinema Corp.* v. *Mackell,* 422 Fed. 2d 293; *Bethview Amusement Corp.* v. *Cahn,* 416 Fed 2d 410, cert. denied, 397 U.S. 920. With the decision in *Heller,* it became the law of the State of New York that an evidentiary seizure of one copy of expressive material could be founded upon the prior judicial scrutiny of such material and determination of the obscenity thereof. This decision of the Court of Appeals was upheld by the United States Supreme Court in *Heller* v. *New York,* 413 U.S. 483 which upheld the New York procedure of prior judicial scrutiny as a condition precedent to an evidentiary seizure of a single copy of expressive matter but made it clear that prior judicial scrutiny could not support a suppressive seizure. The court stated at page 492:

> "But seizing films to destroy them or to block their distribution or exhibition is a very different matter from seizing a single copy of a film for the bona fide purpose of preserving it as evidence in a criminal proceeding, particularly where, as here, there is no showing or pretrial claim that the seizure of the copy prevented continuing exhibition of the film. If such a seizure is pursuant to a warrant, issued after a determination of probable cause by a neutral magistrate, and following the seizure, a prompt judicial determination of the

> obscenity issue in an adversary proceeding is available at the request of any interested party, the seizure is constitutionally permissible. In addition, on a showing to the Trial Court that other copies of the film are not available to the exhibitor, the court should permit the seized film to be copied so that showing can be continued pending a judicial determination of the obscenity issue in an adversary proceeding. Otherwise, the film must be returned."

From the foregoing, it is abundantly clear that even prior judicial scrutiny could not support the massive seizure which took place in defendant's premises. It is also apparent that the seizure must follow the judicial scrutiny, not, as in the instant case, precede it.

If the decision in our Court of Appeals and in the United States Supreme Court in *Heller* were not sufficient to establish the basic principle, *People* v. *Abronovitz,* 31 N.Y. 2d 160, clearly does so. In that case, as in the instant case, a police officer brought before a Judge certain magazines which he had lawfully acquired, requesting that the Judge issue a search warrant for the seizure of similar material possessed in and sold from the store. The warrant was issued and the police seized over 1,000 magazines and calendars from the defendant's premises while arresting the defendant on obscenity charges. Citing *A Quantity of Books* v. *Kansas,* supra, and *Marcus* v. *Search Warrant,* supra, as well as *People* v. *Heller,* supra, our Court of Appeals suppressed and reversed.

In the instant case, the only difference between the *Abronovitz* seizure and our seizure is that the Judge accompanied the police officers in conducting the warrantless

illegal search and seizure. In *Abronovitz* there was a warrant issued by a Judge preceding the search and seizure. In the instant case there was not even such a warrant. If it is the position of the People that the accompaniment of a Judge in the making of an illegal search and seizure turns what would violate the Fourth Amendment into a constitutional procedure, such contention would indeed be novel.

This is not a case such as *Heller* where a Judge lawfully entered a theatre, took his place in the audience, viewed the film, determined its obscenity vel non, and issued a warrant for the seizure of one copy of the film as evidence to be used in connection with the simultaneous arrest of its exhibitor. In *Heller* the "search", if it can be referred to as such, was no more unlawful than any viewing by any other member of the audience in the theatre. In *Heller,* the expression was not suppressed until after the constitutionally permissible viewing of the film, nor did the seizure of a single copy of the film constitute, as the Supreme Court noted, a total suppression of its exhibition. In the instant case, on the other hand, the premises were shut down prior to the "search", the "search" was conducted prior to a determination of the obscenity vel non of the expression and the issuance of a warrant, and the seizure which virtually cleaned out the store's entire stock of expressive material including duplicate copies of the expressive material, clearly earmarking the search as a suppressive rather than an evidentiary seizure. It cannot be overemphasized that an illegal search and seizure must be judged by the facts which existed at the time of the initiation of such illegal search and seizure and cannot

be retroactively legalized and constitutionally justified by prospective facts such as a subsequent judicial scrutiny or even a subsequent determination of the obscenity of the material. Thus, when the Judge, District Attorneys, and state troopers invaded the premises, chased the customers, compelled the clerk to activiate the coin operated film machines so that they could be operated without the insertion of coins, and tore the cellophane wrappers off the books so that they could be inspected, these acts initiated the search and seizure at the premises, a search and seizure which was not preceded by the *prior* judicial scrutiny mandated by *Heller* and *Abronovitz*. Certainly, it could not have been warranted by the search warrant thereafter issued by Judge O'Connor.

CONCLUSION

With the exception of the irrevelant collusion of Judge O'Connor in the unsanctioned search of the premises and massive suppressive seizure of material contained therein, the facts of the instant case fall squarely within the constitutional decisions of the United States Supreme Court in *A Quantity of Books* v. *Kansas*, 378 U.S. 205, *Marcus* v. *Search Warrant*, 367 U.S. 717, *Lee Art Theatre* v. *Virginia*, 393 U.S. 636 (as construed by our Court of Appeals in *People* v. *Abronovitz*, 31 U.S. 2d 160), and *Heller* v. *New York*, 413 U.S. 483. As such, the search and seizure was violative of the First, Fourth and Fourteenth Amendment rights of the defendant herein, *Roaden* v. *Kentucky*, 413 U.S. 496, requiring suppression and return of all the material seized from the premises. As was said in *Marcus* v. *Search Warrant*, *supra*, at 724, and reaffirmed in *Roaden* v. *Kentucky*, *supra*, at 506,

> "The use by government of the power of search and seizure as an adjunct to a system for the suppression of objectional publications is not new . . . the Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression."

The foregoing conclusion was founded upon the broad and clear announcement in *Roaden* v. *Kentucky*, *supra*, at 504 of a higher hurdle in the evaluation of reasonableness in connection with a search and seizure when expressive matter presumptively protected by the First Amendment is involved.

> "Seizing a film then being exhibited to the general public presents essentially the same restraint on expression as the seizure of all the books in a bookstore. Such precipitate action by a police officer, without the authority of a constitutionally sufficient warrant, is plainly a form of prior restraint and is, in those circumstances, unreasonable under Fourth Amendment standards. The seizure is unreasonable, not simply because it would have been easy to secure a warrant, but rather because prior restraint of the right of expression, whether by books or films, calls for a higher hurdle in the evaluation of reasonableness. The setting of the bookstore or the commercial theatre, each presumptively under the protection of the First Amendment, invokes such Fourth Amendment war-

rant requirements because we examined what is 'unreasonable' in the light of the values of freedom of expression."

Respectfully submitted,

KASSNER & DETSKY, P.C.
Attorneys for Defendants.
Alexander Mandakis and
Loji Sales, Inc.

HERBERT S. KASSNER,
Of Counsel

Memorandum of Law

STATE OF NEW YORK
LOCAL CRIMINAL COURT
County of Orange, Town of Wawayanda

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

ALEXANDER MANDAKIS,

Defendant.

STATE OF NEW YORK
LOCAL CRIMINAL COURT
County of Orange, Town of Wawayanda

THE PEOPLE OF THE STATE OF NEW YORK,

—against—

LOJI SALES, INC.,

Defendant.

Since these are two separate cases, the People will treat each case separately.

ALEXANDER MANDAKIS

Defense counsel conceded in his papers that there was no search in the Mandakis case. Accordingly, there is no need for a suppression hearing, the court should not sup-

press the two films and the case should be set down for trial.

LOJI SALES, INC.

In essence, defense counsel's papers only apply to the search as to defendant, Loji Sales, Inc., (see above). Since defense counsel is challenging the manner in which the search was conducted, the People have no objection to the holding of a suppression hearing solely on this issue. *People* v. *Glen,* 30 NY 2d, 252, 262.

It is the People's position that once a hearing has been held, the facts will establish that the Police, accompanied by the Judge, entered the defendant's store when it was open to the public. The Police arrested the store manager with an arrest warrant. The Judge then viewed certain material which was in places open to the public and made an ex parte screening as was done in the case at bar. Because this evidence was in a place open to public acsess, the Judge could screen it as he did in the case at bar. *People* v. *Matherson,* 16 NY 2d 509.

The facts will further indicate that there was no blocking of distribution or putting the defendant out of business. The store was opened for business the very next day. But in any case, defendant's reliance on *Heller* is misplaced. What *Heller* requires is that there is a prompt full hearing before any final restraint. In the case at bar, the terms of the warrant itself authorized a prompt hearing if the defendant desired one.

Defense counsel's analogy to *People* v. *Abronovitz,* 31 NY 2d 160 is totally incorrect. Although there was a large seizure of items, that was not the reason for suppression.

The deficiency in that case was that the Police seized items that had not been examined by a judge preliminatorily to their seizure. The court held that the general clause in the warrant authorizing the seizure of "scenes of nude people, which expose female and male genital organs and pubic areas tnat the male penis and female breat" did not sufficiently limit the police's discretion as to what to seize. In the case at bar, that deficiency was corrected because the Judge first reviewed the material and then told the Police to seize it. Thus, there is no problem of unlimited police discretion as there was in *Abronovitz.*

CONCLUSION

Once the facts are established the Court should not suppress the evidence.

Dated: Goshen, New York
August 12, 1976

Respectfully submitted,

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By: RICHARD L. PARKER, ESQ.
Of Counsel

Judgments in Question

STATE OF NEW YORK
LOCAL CRIMINAL COURT
County of Orange, Town of Wawayanda

THE PEOPLE OF THE STATE OF NEW YORK

—against—

LOJI SALES, INC.,

Defendant.

The Opinion and Order of the Local Criminal Court: Town of Wawayanda (November 13, 1976) appears in the Petition for Certiorari, p. 1a.

Judgments in Question

135-1978

March Term 1978

At a term of the Appellate Term of the Supreme Court of the State of New York for the 9th and 10th Judicial Districts, held in Nassau County, on the 25th day of April, 1978.

Present—HON. THOMAS P. FARLEY,
Presiding Justice,
" " DAVID L. GLICKMAN,
" " MARIO PITTONI,
Justices.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

—v.—

LO-JI SALES, INC.,

Appellant.

The decision of the Appellate Term of the Supreme Court of the State of New York for the Ninth and Tenth Judicial Districts (April 25, 1978) appears in the Petition for Certiorari, p. 5a.

Judgments in Question

STATE OF NEW YORK
COURT OF APPEALS

Before:

HON. LAWRENCE H. COOKE,
Associate Judge.

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

—against—

LO-JI SALES, INC.,
Appellant.

The order of the New York Court of Appeals (July 5, 1978) appears in the Petition for Certiorari, p. 7a.